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much might be said for making such jurisdiction exclusive. But even in cases where no accounts are involved, so that the parties must necessarily resort to a court of law for relief, they should not be heard to complain if the court, weighing the inadequacy of the machinery of law courts and the necessity of giving time to other litigation against the desire to comply with the wishes of the litigants in a particular case, sees fit to refer the case to an auditor for a preliminary hearing.<sup>27</sup>

## RECENT CASES

**BANKRUPTCY — PREFERENCES — FULFILMENT OF CONTRACT WITH PURCHASER WHO HAS PAID IN ADVANCE.** — The plaintiff contracted with the owner of a mill for the entire output of his mill for one year, and paid part of the price in advance. Six months later the owner was adjudicated a bankrupt. The value of the mill's output up to that time was less than the money already advanced by the plaintiff. The lower court ordered the trustee in bankruptcy to continue the contract, which was done. Later, the court ordered the plaintiff to pay again to the trustee the price already advanced to the bankrupt before the bankruptcy. *Held*, that this was error. *Grief Bros. v. Mullinix*, 45 A. B. R. 265.

For a discussion of the principles involved in this case, see NOTES, p. 309, *supra*.

**BILLS OF LADING — EFFECT OF INTERSTATE COMMERCE ACTS UPON VALIDITY OF EXCHANGE BILL OF LADING ISSUED WITHOUT SURRENDER OF ORIGINAL.** — The plaintiff is the *bona fide* purchaser of an exchange bill of lading issued by the defendant railroad without requiring the surrender of the original bill. The Interstate Commerce Acts, as amended, make it "unlawful for any carrier to give any undue or unreasonable preference or advantage to any particular person" and require every carrier to file with the Commission schedules showing "all privileges or facilities granted and any rules or regulations which in any wise affect rates or the value of service rendered." (24 STAT. AT L. 380, 34 STAT. AT L. 586.) The defendant had filed a regulation which provided that original bills of lading must be surrendered before exchange bills would be issued. The plaintiff sues the railroad for failure to deliver shipment. *Held*, that the plaintiff cannot recover. *Pioneer Trust Co. v. Nashville, C. & St. L. R. R. Co.*, 224 S. W. 109 (Mo.).

Whether an exchange bill of lading be issued without a surrender of the original or an original bill of lading be issued without receipt of the goods, a bill of lading is outstanding without any goods behind it. By the weight of authority at common law, a *bona fide* purchaser of such a bill of lading could not recover upon it from the carrier. *Grant v. Norway*, 10 C. B. 665. *Pollard v. Vinton*, 105 U. S. 7. See *Mo., etc. R. Co. v. Hutchings Co.*, 78 Kan. 758, 764, 767, 99 Pac. 230, 232, 233. But the better rule protected the *bona fide* purchaser of the bill of lading. See *WILLISTON, SALES*, § 419. The Uniform Bill of Lading Act adopts this rule. See DRAFT ACT COM'RS UNIFORM STATE LAWS,

he so desired, could have enjoined the suit at law and forced the plaintiff to resort to equity for relief. *Ibid.*, 243. In such case the federal court, sitting as a court of equity, could have made a compulsory reference for decision. See *United States v. Wells*, *supra*, 151.

<sup>27</sup> See *Fenno v. Primrose*, *supra*, 806. In England compulsory reference for preliminary hearing is authorized by the Arbitration Act of 1889. See 52 & 53 VICT., c. 49, § 13.